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DEC - 6 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

JAY S. NEWMAN
ASSOCIATE
(202) 637-9114

December 6, 1994

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TELEX 4938614

HAND DELIVERED

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

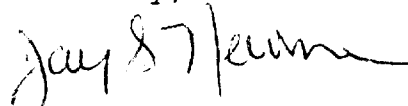
Re: Ex Parte -- MM Docket No. 92-260,
RM 8380 and CC Docket No. 87-266

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise that on Tuesday, December 6, 1994, Peter Price, President, Liberty Cable Company, Inc. ("Liberty"), Henry M. Rivera, Esq., Jay S. Newman, Esq., W. James MacNaughton, Esq., and Leslie Spasser, Esq. met separately with Lauren J. Belvin, Senior Legal Advisor to Commissioner Quello, Jill Lockett, Special Advisor to Commissioner Chong, and Lisa Smith, Legal Advisor to Commissioner Barrett to discuss Liberty's perspective, as contained in its previous filings with the Commission, on the above-captioned proceedings. The attachments to this letter were used in that discussion as well as two models to illustrate the cable inside wiring in multiple dwelling units. (Pages five and six of the attachment contains a diagram of these models.) A total of three copies of this letter and the attachment are herewith provided to you, one copy for each proceeding.

An original and three copies of this letter and the attachment were filed with the Commission and a copy was delivered to the above-named Commission personnel on December 6, 1994.

Sincerely,


Jay S. Newman

Attachments

cc: Lauren J. Belvin
Jill Lockett
Lisa Smith

No. of Copies rec'd 043
List A B C D E

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PETER O. PRICE

President
Liberty Cable Company, Inc.
575 Madison Avenue
New York, New York 10022
212-891-7771

Its Attorneys

Henry M. Rivera
W. James MacNaughton
Jay S. Newman
Leslie Spasser

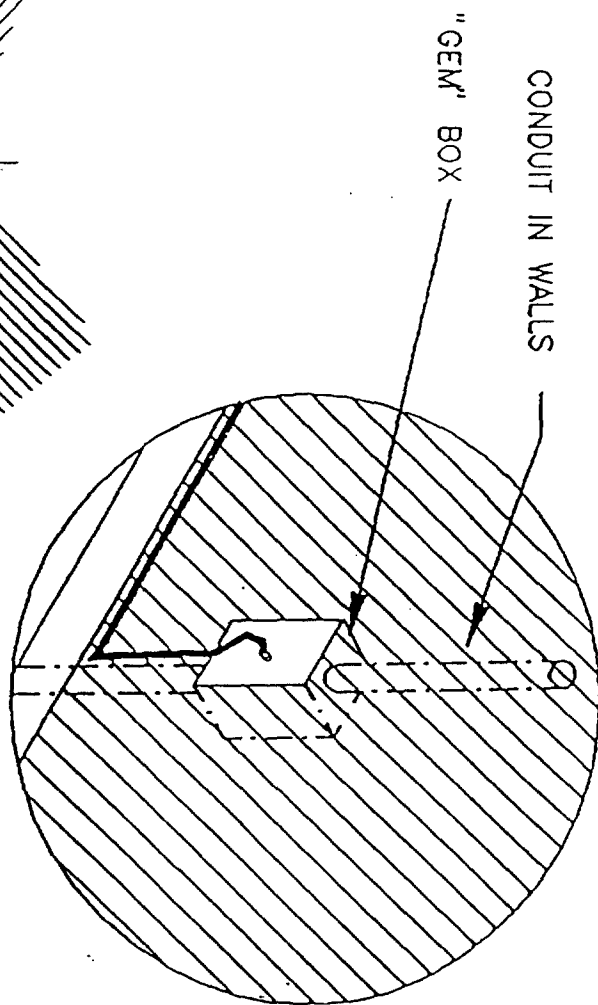
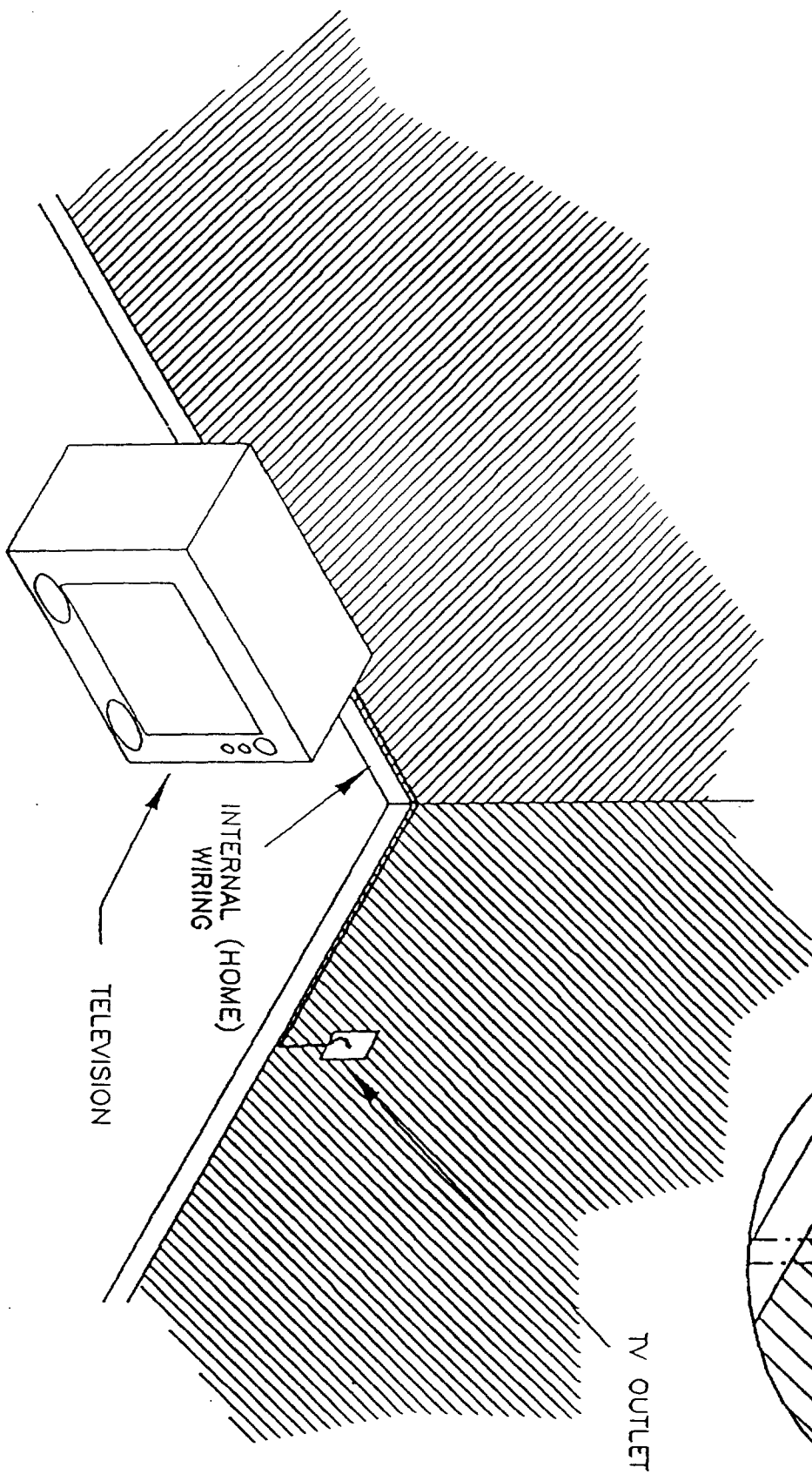
LIBERTY CABLE COMPANY, INC.

- Liberty is a satellite master antenna television ("SMATV") operator that is successfully overbuilding and competing head to head in New York City with Time Warner, the local franchised cable company.
- Liberty currently services approximately 27,000 subscribers at dozens of sites in the New York metropolitan area.
- Almost all of Liberty's subscribers are in multiple dwelling units ("MDUs") -- cooperatives, condominiums and rental apartment buildings.
- Liberty also provides services to several hotels in Manhattan.
- Liberty is a pioneer in the use of the 18 GHz band to provide video services and has built the largest 18 GHz microwave network in the United States. Liberty was intimately involved in the efforts to obtain access to the 18 GHz band for the provision of video service.
- Liberty is also among the first MVPDs in the United States to test video dialtone service and technology.

LIBERTY CABLE COMPANY, INC.

CABLE HOME WIRING

- The demarcation point for cable home wiring in MDUs should be at the point:
 - * where the individual dedicated subscriber lines ("Individual Lines") can be detached from common lines ("Common Lines");
 - * without damaging the property or interfering with service to others;
 - * outside the subscriber's premises but on the MDU property.
- Cable home wiring should include conduits, moldings, gem boxes and other passive equipment used to hold cable home wiring.
- Cable home wiring should include splitters and other passive equipment used to connect Individual Lines to Common Lines.
- A wallplate demarcation point in MDUs is useless and will encourage abusive litigation.
- A wallplate demarcation point in MDUs will leave unanswered the legal status of Individual Lines located between the wallplate and the Common Line. This, as a result, will allow each of the fifty states, applying the common law of fixtures and chattels, to determine consumer access to Individual Lines by competing MVPDs.
- Cable home wiring should include a "loop through" system when all the subscribers on the "loop" switch to another MVPD. The MDU owner should acquire the "loop" (or affected parts).
- The cable home wiring rules do not cause a "taking" of property.



LIBERTY CABLE ENGINEERING DEPARTMENT
 215 EAST 95TH STREET, NEW YORK, NY 10123
 (212) 735-6700, (212) 735 5678 (FAX)

CONDUIT WIRING DETAIL
 PARALLEL SYSTEM WIRING
 DWG 1 OF 2

DRAWN BY: D.G.
 DATE: 7/27/93
 CWG: LBRTY-50

TIME WARNER RISER

LIBERTY RISER

LIBERTY TAP

WALL PLATE

"F" STYLE BARREL

"GEM" BOX

CONDUIT IN WALL

TIME WARNER RISER

LIBERTY RISER



LIBERTY CABLE ENGINEERING DEPARTMENT
215 EAST 95TH STREET, NEW YORK, NY 10128
(212) 735-6700, (212) 735 5678 (FAX)

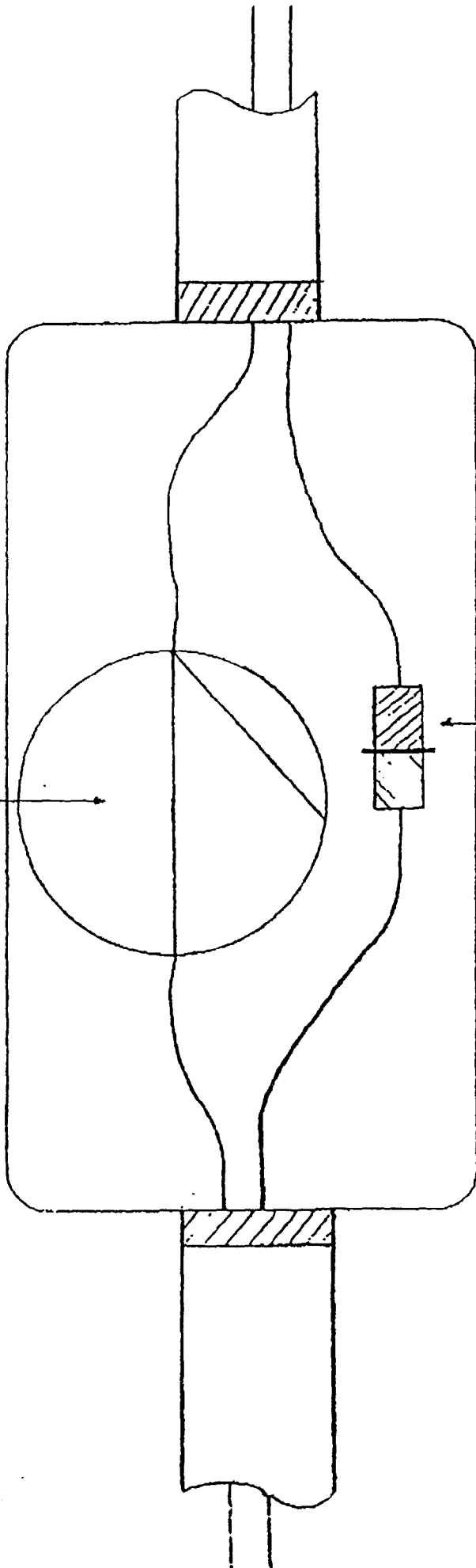
CONDUIT WIRING DETAIL
PARALLEL SYSTEM WIRING
DWG 2 OF 2

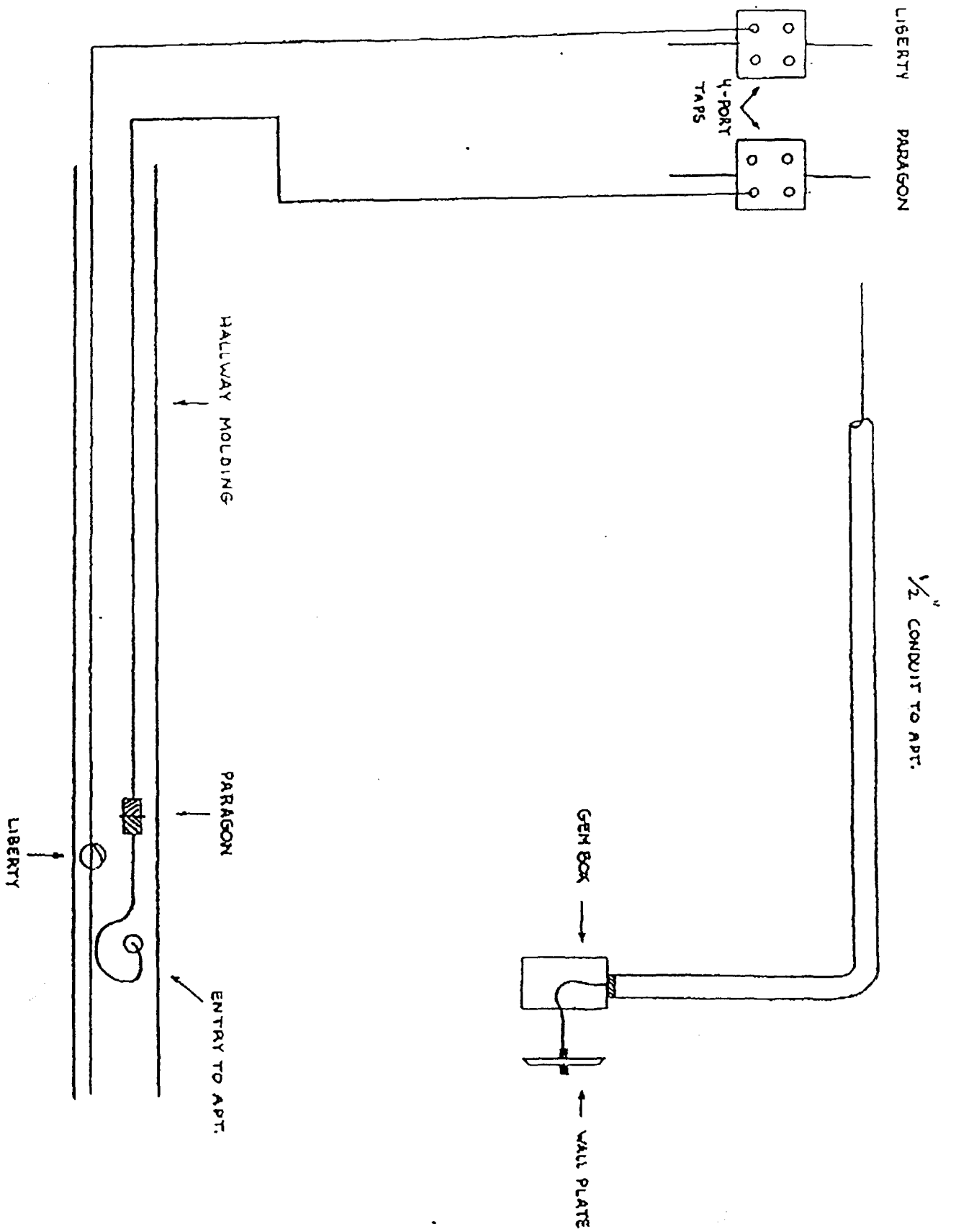
DRAWN BY: D.G
DATE: 7/27/93
GWC: LBRTY-51

LIBERTY TAP

GEM BOX

PARAGON BARREL





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December 5, 1994

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VIA HAND DELIVERY

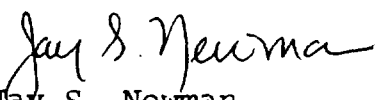
Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Cable Home Wiring, MM Docket No. 92-260

Dear Mr. Caton:

In accordance with Section 1.200 et seq. of the Commission's rules, this is to advise that on Monday, December 5, 1994, the attached letter was hand delivered to Jill Luckett, Special Advisor to Commissioner Rachelle B. Chong, Maureen O'Connell, Legal Advisor to Commissioner James H. Quello and Lisa Smith, Legal Advisor to Commissioner Andrew C. Barrett.

Sincerely,


Jay S. Newman
Counsel for Liberty Cable
Company, Inc.

Attachment

JSN:cas

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December 5, 1994

VIA HAND DELIVERY

Ms. Jill Lockett
Special Advisor to
Commissioner Rachelle B. Chong
FCC - Room 844
1919 M Street, NW
Washington, DC 20554

Ms. Maureen O'Connell
Legal Advisor to
Commissioner James H. Quello
FCC - Room 802
1919 M Street, NW
Washington, DC 20554

Ms. Lisa B. Smith
Legal Advisor to
Commissioner Andrew C. Barrett
FCC - Room 826
1919 M Street, NW
Washington, DC 20554

Ladies:

Enclosed is a letter which was filed with the Commission on November 14, 1994 and which discusses Liberty Cable Company, Inc.'s position in the cable inside wiring proceeding. I thought it may be of interest to you in preparation for our upcoming meeting.

Sincerely,



Jay S. Newman
Counsel for Liberty Cable
Company, Inc.

Enclosure
JSN:cas

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November 14, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Cable Home Wiring, MM Docket No. 92-260

Dear Mr. Caton:

On behalf of Liberty Cable Company, Inc., enclosed for filing in the docket file of the above-captioned proceeding are an original and four copies of the attached letter which responds to the ex parte letters filed by Time Warner Entertainment Company, L.P. in this proceeding. Please call me if you have any questions concerning this matter.

Sincerely,



Jay S. Newman
Counsel for Liberty Cable
Company, Inc.

Enclosures

cc: Patrick Donovan
Lynn Crakes
Julia Buchanan
Larry Walke
Richard Chesson
Jennifer Burton
Marian Gordon

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75008 PARIS, FRANCE

November 14, 1994

WRITER'S DIRECT DIAL NUMBER

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Response to Ex Parte Letters --
Cable Home Wiring, MM Docket No. 92-260

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's Rules, Liberty Cable Company, Inc. ("Liberty") hereby submits this response to the ex parte letters filed by Time Warner Entertainment Company, L.P. ("Time Warner") in this proceeding on December 16, 1993, September 9, 1994, September 14, 1994, and September 29, 1994 (collectively, "ex parte letters"). This letter discusses the following points: Liberty's position in the home wiring proceeding; Congressional intent in enacting the home wiring provisions; the Commission's current inside wiring rules are impractical; Time Warner's proposed demarcation point at the wallplate will effectively nullify the cable home wiring rules in multiple dwelling units ("MDUs"); inaccuracies and misstatements contained in Time Warner's ex parte letters; and, Time Warner has used the judicial process to frustrate competition from Liberty.

I. Liberty's Position in the Home Wiring Proceeding.^{1/}

Liberty is a satellite master antenna television ("SMATV") operator that is successfully overbuilding and competing head to head in New York City with Time Warner, the local franchised cable company. Liberty currently services approximately 27,000 subscribers at dozens of sites in the New York metropolitan area. Almost all of Liberty's subscribers are in MDUs -- cooperatives, condomin-

^{1/} See generally Comments, Reply Comments, and Petition for Reconsideration and Clarification filed by Liberty in MM Docket No. 92-260 and Comments filed by Liberty in RM No. 8380.

Mr. William F. Caton
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Page 2

iums and rental apartment buildings. Liberty is a pioneer in the use of the 18 GHz band to provide video services and has built the largest 18 GHz microwave network in the United States.

Liberty wants the Commission to locate the demarcation point for cable home wiring in MDUs at that point where an individual dedicated subscriber line ("Individual Line") connects to the common wiring ("Common Line").^{2/} To the extent that a service provider needs to access a junction box or other passive equipment to reach this demarcation point, it is essential that the Commission also classify such equipment as cable home wiring. At a minimum, the Commission should impose an obligation on cable operators to facilitate access to such equipment for the purpose of allowing alternate service providers to connect their Common Line to Individual Lines.

Liberty's proposed demarcation point is a practical one which will accommodate the many different variations in MDU construction. Such a demarcation point will, moreover, moot disputes over whether Individual Lines (and the conduits or molding in which they are installed) belong to the franchised cable operator or the building owner.^{3/}

II. Congressional Intent in Enacting the Home Wiring Provisions of the Statute.

A basic premise of the Cable Television Consumer Protection and Competition Act of 1992 was to promote increased competition to

^{2/} Liberty filed a Petition for Reconsideration and Clarification of MM Docket No. 92-260 requesting that the Commission adopt a demarcation point outside the customer's premises and within the common areas of the MDU (e.g., stairwells, hallways, basements, or rooftops) at which the individual subscriber's Individual Line can be detached from the cable operator's Common Line without destroying any part of the MDU and without interfering with the cable operator's provision of service to other residents in the MDU.

^{3/} See infra pp. 8-10.

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cable by alternate providers.^{4/} One means by which Congress intended to promote such competition was by allowing alternate providers to access existing cable home wiring without disrupting the interior of a subscriber's home, making it effortless for the subscriber to switch from cable service to service provided by the alternate provider.^{5/} While Congress stated that the home wiring provisions were "not intended to cover common wiring within the MDU building"^{6/} [emphasis added], Liberty's proposal contemplates that inside wiring will only include those wires which connect a subscriber to the cable operator's Common Lines (and can be easily detached from the Common Line) without destroying any part of the MDU and interfering with the cable operator's provision of service to its subscribers in the MDU.

III. The FCC's Current Inside Wiring Rules Are Impractical.

In February of 1993, the Commission released its Report and Order in the home wiring proceeding.^{7/} The Report and Order complies, in part, with Congress' intent, stating that the definition of cable home wiring is intended to "give alternate providers adequate access to the cable home wiring so that they may connect the wiring to their systems without disrupting the subscriber's premises".^{8/}

However, the Report and Order fails to comply with Congress' intent as it defines cable home wiring as "wiring located within the premises or dwelling unit of the subscriber" with the "demarcation point" for cable home wiring in MDUs "at (or about) twelve

^{4/} See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Sections 2(a)(6), 2(b)(1-2), 106 Stat. 1460 (1992).

^{5/} See H.R. Rep. No. 628, 102d Cong. 2d Sess. at 118 (1992).

^{6/} Id.

^{7/} Implementation of Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, Report and Order, MM Docket No. 92-260 (released February 2, 1993) ("Report and Order").

^{8/} Id. at ¶¶ 11 and 12.

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Page 4

inches outside of where the cable wire enters the outside wall of the subscriber's individual dwelling unit".^{2/} This failure (which makes the existing demarcation point practically meaningless) can be attributed to the fact that the Commission was unfamiliar with common MDU construction practices.^{10/}

In many MDUs, wire within twelve inches of a subscriber's premises is buried in a brick, concrete or cinder block wall or concealed in a pipe conduit and is not, therefore, readily accessible without causing substantial damage to the building and the subscriber's apartment. Attached as Exhibit A is a diagram illustrating this problem.

Time Warner is patently wrong when it states in its ex parte letters that in the overwhelming majority of MDU buildings in New York City, the cable which is twelve inches outside a subscriber's unit, is located in readily accessible public areas which allows convenient splices. To the contrary, in many MDUs in Manhattan, Time Warner installed its feeder cables in the stairwells of the MDUs. In these MDUs, individual wires run from each subscriber's premises to the cable operator's feeder cables in the stairwells. The Individual Lines joining the subscriber's apartment to the feeder cables in the stairwells are typically not accessible 12 inches outside the subscriber's premises since they are (i) concealed in inaccessible pipe conduits or molding; or (ii) buried in concrete hallway floors.

IV. Time Warner's Proposed Demarcation Point at the Wallplate Will Effectively Nullify the Cable Home Wiring Rules in MDUs.

Time Warner's ex parte letters propose that the Commission adopt a demarcation point for cable home wiring in MDUs where the Individual Line enters the interior of an individual dwelling unit, (i.e., at the wallplate). Time Warner's proposal, if adopted, will create a meaningless demarcation point that completely frustrates the purpose of the cable inside wiring rules.

^{2/} Id. at ¶¶ 4 and 12.

^{10/} The Commission's existing cable inside wiring demarcation point is probably appropriate in the context of most single family homes where a location that is twelve inches outside of the home is usually an accessible location.

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Page 5

Under Time Warner's proposal, competitors (such as Liberty) will have only two real alternatives for obtaining access to subscribers in MDUs. First, Liberty would have to compel Time Warner to remove its Individual Lines from internal pipe conduits so that Liberty's Individual Lines could be placed in the conduit.^{11/} This would be an expensive and time consuming method of switching cable service. Removing and replacing Individual Lines in conduits each time a subscriber changes video service providers serves no legitimate purpose other than to make the change costly and time consuming. Furthermore, if the cable operator refused to remove its wire from building conduit, then the parties could very readily become embroiled in the kind of litigation and delays the home wiring rules are intended to avoid. Time Warner itself recognized the wisdom of sharing the use of Individual Lines when Time Warner entered into such a sharing arrangement with Liberty at the Horizon Condominium complex. See infra, p. 9.

The second alternative would be for Liberty to install a Common Line in each hallway of each building and enter each individual dwelling unit through a hole over the front door. Liberty would then have to run an Individual Line around the interior of each dwelling unit to either the Time Warner demarcation point at the wallplate or directly to the subscriber's television set. Such an installation will cause the very disturbance to the interior of a subscriber's home that the cable home wiring rules were intended to avoid. MDU owners hate hallway installations and MDU residents hate exposed wires in their home.

Time Warner's wallplate demarcation point is sensible only in the very limited case where the conduit leading to the wallplate is large enough to accommodate two sets of cable and the Individual Line meets the Common Line inside a "gem" box covered by the wallplate. There are only a handful of buildings in New York City with such cable system construction.

^{11/} Liberty would be entitled to require the removal of Time Warner's Individual Lines from conduits under the New York City franchise which provides that "[t]he installation of all cables, wires or other component parts of [Time Warner's] system in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS or other distribution system in said structure, including any conduit used in connection with such other system." New York City Franchise, Appendix B, Paragraph B.2.

Mr. William F. Caton
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Page 6

The cable inside wiring rules are intended to facilitate competition and avoid unnecessary disruptions to the interior of the subscriber's home. Time Warner's wallplate demarcation point, when applied to the real and practical problems of MDU wiring in major urban areas, accomplishes neither of these goals. Instead, it frustrates competition and will cause needless duplicative and unaesthetic wiring of the interiors of apartments.

Liberty's proposed demarcation point where Individual Lines meet the Common Line is, in contrast, readily adaptable and easily applied to all different kinds of cable construction found in MDUs. Liberty's proposed demarcation point eliminates the need to wire an apartment twice and eliminates the pointless removal and reinstallation of Individual Lines in building conduits.

V. Inaccuracies and Misstatements Contained In Time Warner's Filings.

Time Warner's ex parte letters contain false statements, inaccuracies and misinformation, the purpose of which seems to be to confuse the issues and divert attention from the purpose of the inside wiring rules. For example, Time Warner has made numerous unsubstantiated and patently false statements regarding Liberty's marketing and installation practices. Liberty unequivocally denies each of these allegations. In addition, Time Warner attempts to confuse the inside wiring issue by arguing that competing multi-channel video programming distributors ("MVPDs") are trying to "unfairly shift the normal costs of doing business" by utilizing existing inside wiring. In reality, competing MVPDs (like Liberty) merely want the demarcation point to be easily accessible so that: (i) consumers truly have a choice about who provides them their video programming; and, (ii) MDUs do not have to be destroyed to provide customers with service.

Moreover, we note that in Time Warner's September 29, 1994 ex parte letter in this proceeding, Time Warner states that Liberty has "urged the Commission to amend the home wiring rules to allow competitors to 'share' home wiring, even while the incumbent cable operator continues to provide cable service over that wiring". Liberty has never so "urged" the Commission in its filings and is unsure how Time Warner could have so grossly misinterpreted Liberty's comments in RM No. 8380.

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Page 7

Finally, Time Warner suggests that the cable home wiring rules may be unconstitutional because they authorize a taking of property without just compensation determined in a judicial proceeding.^{12/} However, the cable home wiring rules do not cause a "taking" of property for at least two reasons. First, the home wiring rules do not compel the permanent physical possession of the wiring by a third party. Cf., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). Instead, the cable home wiring rules regulate the manner in which the cable home wiring is sold, removed or abandoned upon voluntary termination of the relationship between a cable company, a subscriber and an MDU owner that was created when the cable home wiring was first installed in the MDU. In Federal Communications Commission v. Florida Power Corporation, 480 U.S. 245, 107 S.Ct. 1107 (1987) ("Florida Power"), the United States Supreme Court ruled that the Pole Attachments Act, 47 U.S.C. § 224, does not cause a taking of property because the statute did not require the utility to give up pole space to a cable company. The cable home wiring rules likewise do not require the cable operator to give up its wires, it merely regulates the disposition of the wire after the cable operator has no need for it.

Second, such regulation is not a "taking" of property merely because it may place constraints on the use of the wire after the cable operator has no need for it. Florida Power; Warschauer Sick Support Soc. v. State of New York, 754 F.Supp. 305, 307 (E.D.N.Y. 1991) (New York law requiring cemetery plots to be offered for sale to the cemetery at original cost plus 4% before sold on the open market is not a taking of property.) See also Yee v. City of Escondido, Cal., 112 S.Ct. 1522 (1992). Like the Pole Attachment Act discussed in Florida Power, the cable inside wiring rules, as applicable to MDUs, merely regulate the terms and conditions of a relationship that had been previously and voluntarily entered into between the relevant parties.

^{12/} Time Warner raised this issue in the context of Liberty's Petition for Clarification. However, the length of the wire subject to the cable home wiring rules or the demarcation point is irrelevant for purposes of the takings issue raised by Time Warner.

Mr. William F. Caton
November 14, 1994
Page 8

VI. Time Warner Has Used The Judicial Process To Frustrate Competition From Liberty.

Aside from the above-described physical barriers which Liberty faces in accessing the cable inside wiring in many MDUs, Liberty's competitors have used the judicial process to intimidate potential Liberty customers. Time Warner claims, erroneously, that Liberty "often misappropriates" Time Warner's wires. The truth is that Time Warner frequently claims ownership and control over wires it does not own and then files multimillion dollar lawsuits over that wiring in a baseless attempt to scare away Liberty's customers. Set forth below are a few such examples.

- **Paragon Cable Manhattan v. 180 Tenants Corporation and Douglas Elliman-Gibbons & Ives, Inc.,** Supreme Court of the State of New York, County of New York, Index No. 6952/92. Time Warner sued this 155 unit co-op for over \$1 million in damages when the co-op signed a contract with Liberty. Time Warner claimed exclusive control over the building's (not Time Warner's) master antenna system ("MATV") even though Time Warner's New York City franchise and state law prohibits such exclusivity. All of the building's residents wanted to switch to Liberty. The co-op had to solicit the intervention and mediation of the New York State Commission on Cable Television which encouraged Time Warner to relinquish control of the MATV, construct its own separate system to the co-op's aesthetic specifications and dismiss its damage claims. Liberty's service was delayed eight months while this settlement was concluded. During that time, other co-op boards believed they would suffer the same fate as 180 East End Avenue if they signed up with Liberty.
- **Manhattan Cable Television, Inc. v. Fifty-First Beekman Corp.,** Supreme Court of the State of New York, County of New York, Index No. 92-16790. Time Warner sued this 109 unit co-op for over \$1 million in damages when the co-op signed a contract with Liberty. This action came three months after the 180 Tenants Corp. lawsuit was filed. As with 180 Tenants Corp., Time Warner claimed exclusive control over the building's MATV. Liberty built a second, parallel system in the MATV conduits and the co-op produced, in court, signed statements from 100% of the building's full time residents asking to switch from Time Warner to Liberty. The court dismissed Time Warner's lawsuit but Liberty's service was still delayed four months while the second system was constructed and the court papers prepared and filed. Again, during that time, other co-

Mr. William F. Caton
November 14, 1994
Page 9

op boards believed they would suffer the same fate as Fifty-First Beekman if they signed up with Liberty.

- In the Matter of the Application of Manhattan Cable Television, Inc. to Obtain Disclosure of the Board of Managers of the Horizon Condominium and Liberty Cable Company, Inc. to Aid in Bringing an Action Against The Board of Managers of the Horizon Condominium, Supreme Court of the State of New York, County of New York, Index No. 12828/92. Time Warner sued this 441 unit condominium when it learned that the board was negotiating with Liberty. Time Warner took the position that it owned all the Individual Lines in the conduits running from the stairwells to the dwelling units. The condominium responded by showing that the condominium owned the conduits used by the Individual Lines. the condominium demanded that Time Warner remove "its" wire from those conduits so Liberty could install a new wire. The dispute was resolved by the condominium, Liberty and Time Warner agreeing that Liberty and Time Warner could both use the Individual Lines to serve their individual subscribers. A copy of that agreement is attached as Exhibit B. The agreement shows that Time Warner can, as a practical and operational matter, easily share the use of Individual Lines -- even long ones in concealed conduits -- when it wants to. But Time Warner has, since entering into this sharing agreement, sought to negotiate agreements with other building owners that would give Time Warner exclusive use of the conduits. Liberty has complained about this practice to the New York City franchising authority. A copy of Liberty's complaint to the New York City Department of Telecommunications and Energy is attached as Exhibit C.
- Paragon Cable Manhattan v. P & S 95th Street Associates and Milstein Properties Corp., Supreme Court of the State of New York, New York County, Index No. 130734/93. Time Warner sued the owners of this 280 unit apartment building for over \$1 million in damages claiming that the owners (who also have an interest in Liberty) conspired with Liberty to misappropriate the Individual Lines. The original electrician's contract for the building shows that the entire cable TV system for the building was installed by the owner's electrician at the owner's expense. Time Warner nonetheless claims ownership of all cable television wire in the building and has been sabotaging and cutting Individual Lines to prevent Liberty from using them. Liberty expects that Time Warner will soon be asking a New York State court to adopt Time Warner's

Mr. William F. Caton
November 14, 1994
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wallplate demarcation point under the existing cable home wiring rules.

- 10 West 66th Street Corporation v. Manhattan Cable Television, Inc., Supreme Court of the State of New York, County of New York, Index No. 10407/92. This action was started by a 279 unit co-op seeking to enjoin Time Warner from interfering with the upgrade of the building's MATV so Liberty could provide service. Time Warner responded by claiming ownership over vaguely defined "facilities" and asserting a \$1 million counterclaim for the co-op's interference with these "facilities." This case is still pending.
- Manhattan Cable Television v. 35 Park Avenue Corp., WPG Residential, Inc. and Williamson, Picket, Gross, Inc., Supreme Court of the State of New York, County of New York, Index No. 23339/92. Time Warner sued this 145 unit co-op for over \$1 million in damages after the co-op signed a contract with Liberty. The complaint was patterned on the 180 Tenants Corp. and Fifty-First Beekman Corp. complaints. This case is still pending.

The above-described Time Warner suits and counter-suits are bizarre examples of a supplier litigating with its customers to prevent the customer's election to do business with a competitor. This terror tactic will stop if the Commission adopts Liberty's demarcation point for MDU cable home wiring. A demarcation point where an Individual Line meets the Common Lines will moot any "ownership" dispute over Individual Lines. But Time Warner's litigation threat will only get worse if the Commission adopts the Time Warner demarcation point because ownership of Individual Lines beyond the wallplate will remain an open issue to be determined state by state under the common law of fixtures.

* * * * *

GINSBURG, FELDMAN AND BRESS
CHARTERED

Mr. William F. Caton
November 14, 1994
Page 11

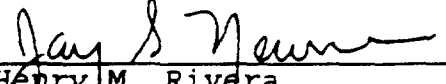
Liberty respectfully requests that the Commission reconsider
its demarcation point for cable inside wiring in MDUs.

Respectfully submitted,


LIBERTY CABLE COMPANY, INC.

GINSBURG, FELDMAN AND BRESS
CHARTERED

By:


Henry M. Rivera
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Woodbridge, NJ 07095
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ATTORNEYS FOR
LIBERTY CABLE COMPANY, INC.

LIBERTY PARAGON

4-PORT
TAPS

1/2" CONDUIT TO APT.

GEM BOX

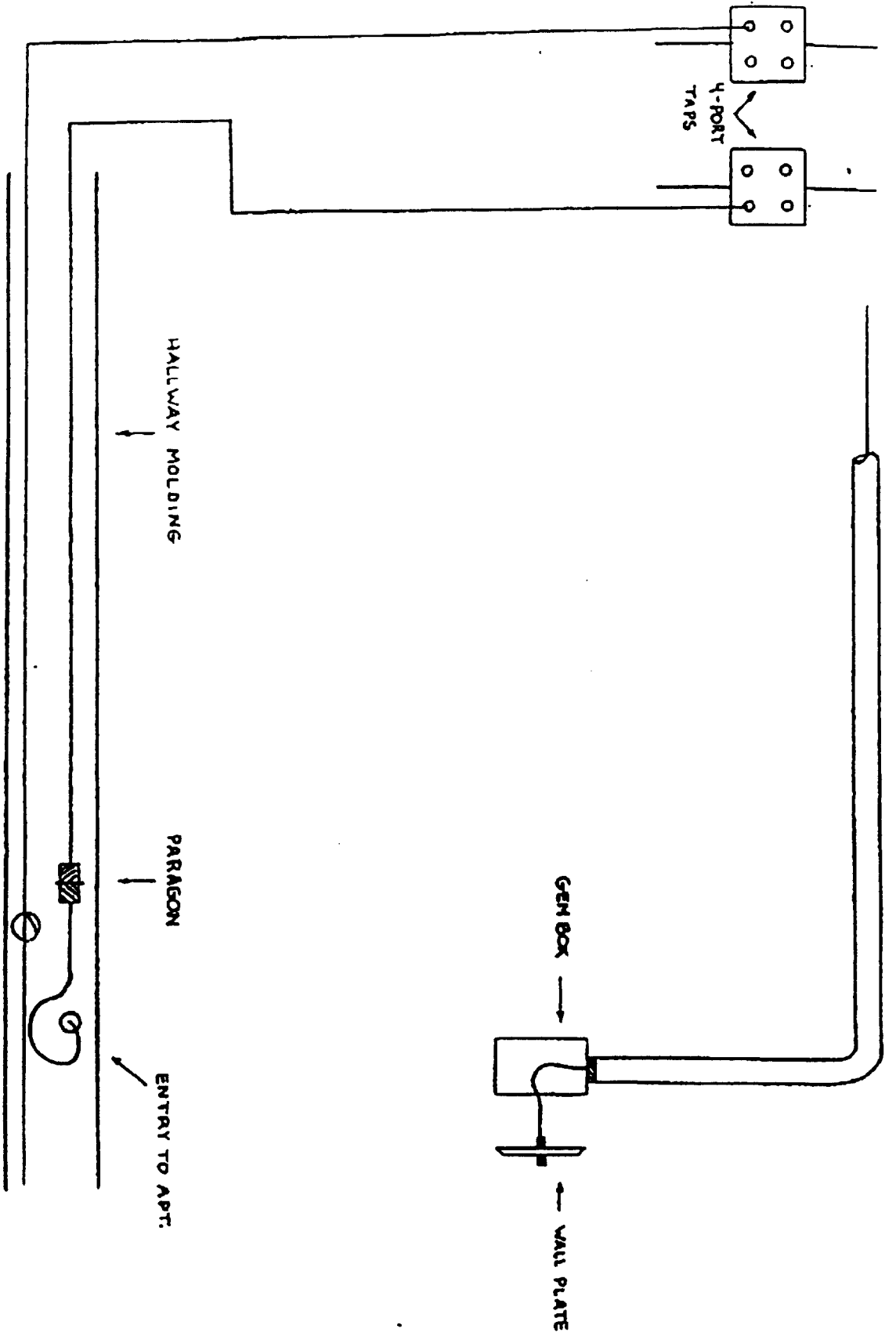
WALL PLATE

HALLWAY MOLDING

PARAGON

ENTRY TO APT.

LIBERTY



AGREEMENT

This Agreement is made as of the 16th day of ^{November}~~October~~, 1992 by and among Time Warner Cable of New York City, a division of Time Warner Entertainment Company, L.P. ("TWCNYC"), The Board of Managers of the Horizon Condominium (the "Board"), a residential apartment building located at 415 East 37th Street, New York, N.Y. (the "Building"), and Liberty Cable Company, Inc. ("Liberty").

W I T N E S S E T H :

WHEREAS, TWCNYC, a franchised cable television company, has installed, used and maintained, at its expense, a cable television signal distribution system at the Building, including, but not limited to, vertical riser cables, pull boxes, amplifiers, directional couplers and splitter networks, wall plates and home run cables (collectively, the "Existing System");

WHEREAS, in the Existing System, the home run cables are connected to the vertical riser cables through directional coupler and splitter networks and carry TWCNYC's cable television signal from the directional coupler and splitter networks to the individual apartments at the Building (these home run cables are hereinafter collectively, the "Home Runs");

WHEREAS, the Board has contracted with Liberty for Liberty to provide Liberty's SMATV television service to residents of the Building who want Liberty's service rather than TWCNYC's service (collectively, the "Liberty Residents"), and to that end, Liberty has installed or will install a system,

including vertical riser cables, splitters and other equipment, to distribute its SMATV signal to the apartments at the Building;

WHEREAS, Liberty and the Board would like Liberty to use the Home Runs that run to the apartments of the Liberty Residents for the purpose of distributing Liberty's SMATV signal to the Liberty Residents for so long as such residents want to receive Liberty's SMATV service rather than TWCNYC's cable service;

WHEREAS, it is the position of TWCNYC that it owns the Existing System, including the Home Runs, and that neither Liberty nor the Board has any right to use or authorize the use of the Home Runs or any other element of the Existing System, and it is the position of the Board that the Home Runs are fixtures of the Building and that the Board may authorize Liberty to use them;

WHEREAS, notwithstanding these differing positions, each of Liberty and the Board represents that it will not interfere with the provision of TWCNYC's cable service to any resident of the Building who wants TWCNYC's cable service, either now or in the future; and

WHEREAS, in order to avoid the time and expense of litigation and without admitting the validity of the positions stated by any other party hereto, TWCNYC, Liberty and the Board wish to resolve this dispute in the manner set forth below.

NOW, THEREFORE, the parties agree as follows: